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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 1129

MARK E. STOFFEL, ADMINISTRATOR OF THE ESTATE OF BERNARD J. STOFFEL, DECEASED, AND THE COMMUNITY STATE BANK, HUNTINGTON, INDIANA, ADMINISTRATOR OF THE ESTATE OF DONALD H. STOFFEL, DECEASED,
Petitioners,

vs.

ROBERT SLATER,
Respondent.

MARK E. STOFFEL, ADMINISTRATOR OF THE ESTATE OF BERNARD J. STOFFEL, DECEASED, AND THE COMMUNITY STATE BANK, HUNTINGTON, INDIANA, ADMINISTRATOR OF THE ESTATE OF DONALD H. STOFFEL, DECEASED,
Petitioners,

vs.

GEORGE SLATER,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF INDIANA.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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I. OPINIONS BELOW.

The relevant opinions below, and their official citations, are adequately set forth in the Petition.

II. JURISDICTION.

The jurisdictional requisites for the Petition are adequately set forth therein. However, Respondents dispute that said requisites are met by the case at bar, as is set forth in the Argument section of this Brief, *post*.

III. QUESTIONS PRESENTED.

The questions presented for review are:

A. Whether the Petition, filed pursuant to the jurisdictional authority vested in this Court by virtue of 28 U. S. C. § 1257 (to obtain review by this Court of a judgment of the Appellate Court of Indiana which reversed the trial court on procedural matters and remanded these causes for further proceedings including trial on their merits), is timely, as regards the requirement of that section that state court judgments sought to be reviewed by means of Petition for certiorari be "*final judgments or decrees* rendered by the highest court of a state . . . ?" [Emphasis supplied].

B. Whether a decision of a state court of last resort, which is based on non-federal grounds (an interpretation of the scope and effect of the state law doctrine of *res judicata*, as it applies to state court actions for personal injuries) which adequately support the court's judgment, presents a substantial federal question worthy of review by this Court.

C. Whether decision of the Appellate Court of Indiana, interpreting and applying the Indiana doctrine of *res judicata* consistently with its prior rulings violates any federal title, right, privilege or immunity granted petitioners by reason of (1) Article IV, Constitution of the United States, or (2) 28 U. S. C. § 1738?

IV. STATUTES INVOLVED.

In addition to those Constitutional provisions and statutes set forth in the Petition, Respondent would include 28 U. S. C. § 2283:

> § 2283. *Stay of State court proceedings.*
>
> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. June 25, 1948, c. 646, 62 Stat. 968.

V. STATEMENT OF THE CASE.

The Statement of the Case set forth in the Petition, insofar as it sets forth the procedural history of these causes, is substantially correct. However, it is incumbent to note that, following the judgment of the United States Court of Appeals for the Seventh Circuit, *George Slater, et al.* v. *Mark E. Stoffel, et al.*, 313 F. 2d 175 (CA 7th, 1963); cert. den. 375 U. S. 818 (1963) and the summary judgments of the District Court for the Northern District of Indiana, Fort Wayne Division (A-19 to A-24) entered thereon, Respondents filed actions in the Huntington, Indiana Circuit Court to avail themselves of remedies not raised or considered in the prior actions before the District Court.

Respondents' state court actions were based on the premises, inter alia, that (1) The District Court judgments did not dispose of the merits of Respondents' claims, but were merely determinative of certain procedural prerequisites to diversity jurisdiction in the District Court, and that (2) The Indiana Journey's Account or Savings Statute, *Burns Ind. Stats. Annot.*, § 2-608 provided an expanded period of limitation, during which Respondents were entitled to assert additional remedies for enforcement of their tort claims against Petitioners, which had not been raised or considered in the prior District Court actions.

The Petitioners demurred to Respondents' Huntington, Indiana Circuit Court Complaints, questioning the applicability of both the Journey's Account Statute and the additional remedies (in particular, a 1961 amendment to *Burns Ind. Stats. Annot.*, § 7-801 adding subsection (f) thereto and permitting direct suit against a decedent's administrator without the necessity of filing a claim in the decedent's estate) sought by Respondents. The Petitioners in no way raised the question of any *res judicata* effect of the prior District Court judgments in their Demurrers.

The Petitioners' Demurrers were sustained, and appeal was taken to the Appellate Court of Indiana, where the trial court ruling was reversed and these causes remanded. *Slater* v. *Stoffel*, 140 Ind. App. 131, 221 N. E. 2d 688 (1966).

As is apparent from that opinion, the question presented by Petitioners' Demurrers was the availability of *Burns*, § 7-801(f) as a remedy permitting direct suit against Petitioners, in the absence of claims having been filed in the estates of the decedents, within the six month period provided therefor. Citing and upholding the case of *Staple*

v. *Richardson,* 140 Ind. App. 20, 212 N. E. 2d 904 (1966), trans. den., the Appellate Court held that the provisions of *Burns,* § 7-801 are procedural rather than substantive and that, as a consequence, § 7-801(f) applied retroactively to Respondents' state court causes and established that they were procedurally correct.

The venue of these causes was ultimately changed to the Kosciusko, Indiana Circuit Court. It was in that court, some four (4) years following the institution of Respondents' state court actions that Petitioners first sought to raise the question of the *res judicata* effect of the District Court judgments by means of Motions for Summary Judgments. The Petitioners' Motions for Summary Judgment were sustained by the Kosciusko Circuit Court, and Respondents perfected a second appeal to the Appellate Court of Indiana.

Concurrently with the perfection of this appeal, Petitioners filed Ancillary Petitions for Injunction in the District Court, pursuant to 28 U. S. C. § 2283, in an effort to enjoin further proceedings in Petitioners' state court appeals on the basis that said proceedings were merely a relitigation of matters conclusively determined by the prior District Court judgments. After briefing and argument, in the District Court, presided over by the same Judge who rendered the earlier judgments against Respondents, held that Petitioners had failed to make a strong and unequivocal showing that Respondents' state court actions were a relitigation of matters concluded by the District Court judgments, and refused injunctive relief. Petitioners perfected appeal from this ruling to the United States Court of Appeals for the Seventh Circuit, where the ruling of the District Court denying injunctions against

the instant state court actions was affirmed. *Slater* v. *Stoffel*, 411 F. 2d 653 (C. A. 7th, 1969).

Shortly following the decision of the Court of Appeals, the Indiana Appellate Court decided the Respondents' pending state court appeal, by means of an opinion and judgment published as *Slater* v. *Stoffel*, 248 N. E. 2d 378 (Ind. App., 1969). In that judgment (which is the subject of the instant Petition for Certiorari), the Appellate Court reversed the summary judgments entered against Respondents and remanded these causes for closing of the issues and trial on their merits. Subsequently, the Supreme Court of Indiana denied transfer of these cases (A-15).

The reasoning and authority supporting the conclusion that the District Court judgments do not present a *res judicata* bar to the instant actions is clear from the Appellate Court's opinion. The Court found that the District Court judgments concerned only a procedural aspect of Respondents' causes (the failure to file claims in Petitioners' decedents' estates), and did not preclude determination of the merits of Respondents' causes, or present a *res judicata* bar to Respondents' subsequent state court actions, filed in compliance with *Burns Int. Stats. Annot.*, § 7-801(f). In reaching this conclusion as to the applicability of the Indiana doctrine of *res judicata* the Indiana Appellate Court held at 248 N. E. 2d 378, 382:

> In order that a former judgment may constitute a defense, such judgment must have been on the merits. *Johnson* v. *Knudson-Mercer Co.* (1906), 167 Ind. 429, 79 N. E. 367; *Guthrie* v. *Blakely* (1955), 127 Ind. App. 118, 130 N. E. 2d 62, 131 N. E. 2d 357; *Banta* v. *Banta* (1948), 118 Ind. App. 117, 76 N. E. 2d 698, 77 N. E. 2d 597, *Evansville American Legion Home Association* v. *White* (1967), Ind. App. ....., 230 N. E. 2d 623;

17 I. L. E., *Judgment*, §443, pp. 453-454. The Federal court judgment was not, in our opinion, rendered on the merits, but was based upon an erroneous view as to a procedural requirement. 58 Am. Jur., *Judgments*, § 348, p. 390; 50 C. J. S., *Judgments*, § 627, p. 52. It was therefore error to grant summary judgments by reason of such Federal court judgment.

A second and equally persuasive reason for refusing applicability of the Indiana doctrine of *res judicata* to the facts of these actions was given by Justice White, in the concurring opinion, at 248 N. E. 2d 378, 384:

> *Res judicata* is a defense that can be waived[5] and it is my opinion that it was waived by the appellees when they elected to relitigate in the trial court (and in this court), on demurrer, the law question of whether appellants' cause of action was barred by the 1953 statute rather than by properly asserting (by answer or summary judgment motion supported by affidavit) that it was barred because the federal court had already decided that law question against appellants.[6] Therefore the law of *this case* established by our former adjudication is still the law of this case.
>
> I therefore concur in the result reached by the majority.

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5. *Brown* v. *Stapleton*, 216 Ind. 387, 391, 24 N. E. 2d 909 (1940).

6. "A party cannot rely upon a judicial determination of any issue by way of estoppel, and also upon proof of the facts upon which the determination is based. The necessary effect of the estoppel is to preclude all inquiry as to the truth of the matter determined, and when a party who is entitled to set up the estoppel opens the inquiry into the truth of the matter he cannot complain that the other party pursues it without regard to the estoppel." *Megerle* v. *Ashe*, 33 Cal. 74, 84 (1867). [That case involved truth of

facts vs. their prior adjudication. The case at bar involves correctness of a rule of law vs. its prior adjudication. Appellees by their demurrer opened the inquiry into what was the correct rule of law and cannot now complain that appellants pursued that inquiry *without regard* to estoppel by the federal court decision.]

"Before a party can be held conclusively to have waived defense of estoppel by former judgment, he must have assumed a position so inconsistent with the assertion as to amount to an election to abandon it [which appellees did by demurring and permitting an appeal without having asserted the prior adjudication as an estoppel] or proceedings must have reached a stage that the allowance would be inequitable. [The second appeal is such a stage.] *Hickey* v. *Johnson*, C. C. A. Okl., 9 F. 2d 498 . . ." 50 C. J. S. 15, Judgments § 597, note 21.

On the basis of the reasons advanced in support of both the majority and concurring opinions it is clear that the Appellate Court of Indiana rendered a well-reasoned and correct judgment regarding the lack of conclusiveness of the District Court judgments on Respondents' instant actions.

VI. ARGUMENT.

A. The Judgments of the Indiana Appellate Court, Are Not "Final," Within the Requirements of 28 U. S. C. § 1257.

The threshold inquiry in determining the question of jurisdiction over the Petition must be whether the judgments of the Indiana Appellate Court, for which certiorari is sought, are "*final judgments or decrees* rendered by the highest court of a state. . . ." 28 U. S. C. § 1257.

The judgments in question (See, *Slater* v. *Stoffel*, 248

N. E. 2d 378 (Ind. App. 1969)) determined only the question of the applicability of the Indiana law doctrine of *res judicata, and remanded these causes to the trial court for closing of the issues and trial.* Under these circumstances, it appears beyond cavil that (1) the "finality" requirement of 28 U. S. C. § 1257 has not been met, and (2) the instant Petition is premature.

In the case of *Market Street R. Co.* v. *Railroad Commission*, 324 U. S. 548, 551, this Court elucidated the substance of the requirement that judgments for which certiorari is sought be "final":

> Our jurisdiction to review a state court judgment is confined by longstanding statute to one which is final. Judicial Code, § 237, 28 U. S. C. A. § 344, 8 FCA Title 28, § 344. Final it must be in two senses: It must be subject to no further review or correction in any other state tribunal; *it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein.* It must be the final ward of a final court.

While it is clear that the pendence of mere administrative or ministerial acts does not prevent "finality" of a judgment, it is also clear that the requirement of finality has *not* been met where additional legal or factual issues remain for disposition. *Republic Natural Gas Co.* v. *Oklahoma*, 334 U. S. 62, 679; *Radio Station WOW* v. *Johnson*, 326 U. S. 120, 123-4; *Brace* v. *Tobin*, 245 U. S. 18; *Mississippi Central R. Co.* v. *Smith*, 295 U. S. 718.

Perhaps the most obvious nonfinal judgment, within the guidelines established by this Court, is one which remands a cause for trial, retrial, or for further proceedings consistent with the judgment, following disposition of one or more legal issues. *Cincinnati Street R. Co.* v. *Snell*, 179

U. S. 395; *Scott* v. *Booth*, 253 U. S. 475; *Laclede Gas Light Co.* v. *Public Service Comm.*, 304 U. S. 398. Cf. also, *Annotation—When Judgment of state court in civil cases is final for purpose of review by Supreme Court of United States*, 89 L. Ed. 1186, *et. seq.*; Crick, *The Final Judgment as a Basis for Appeal*, 41 Yale L. J. 539 (1932); Boskey, *Finality of State Court Judgments Under the Federal Judicial Act*, 43 Colum. L. Rev. 1002 (1943).

The authorities cited, *supra*, and the definitions of jurisdictional finality contained therein reveal a carefully drawn policy of avoidance of piecemeal interference with state court proceedings, prior the time that the controversy there shall have been finally resolved. Where, as in the instant cases, the state court judgment does not affect matters of wide public concern but merely the rights of the individual litigants this carefully drawn policy has *a fortiori* applicability.

Since the judgments of the Appellate Court of Indiana, for which certiorari is sought are not "final" within the requirement of 28 U. S. C. § 1257, as defined by this Court, the Petition should be denied.

B. The Judgments of the Indiana Appellate Court, Interpreting and Apply the Indiana Doctrine of Res Judicata, Do Not Involve Any Substantive Federal Question Warranting Review by This Court.

The issue presented to and determined by the Indiana Appellate Court is narrow, and is solely a question of the application of the Indiana doctrine of *res judicata* to the unique facts of the cases at bar. No amount of strained semantics can convert this question into a substantial federal question, warranting review by this Court on certiorari.

The Petition is based upon a contention that the Indiana Appellate Court (1) failed to give proper effect to prior judgments of a United States District Court, thereby denying Petitioners a right, privilege or immunity claimed under the Constitution of the United States, Article IV and 28 U. S. C. § 1257(3), and (2) improperly interpreted the effect of a summary judgment of a United States District Court, rendered pursuant to Federal Rules of Civil Procedure, Rule 56. The decision of the Appellate Court of Indiana here in question in no way disputes the validity of Article IV, 28 U. S. C. § 17, or Rule 56. In fact, the decision of the Appellate Court is silent as regards any reference to these provisions. *Slater* v. *Stoffel*, 248 N. E. 2d 378 (Ind. App. 1969). The sole question presented to and decided by the Appellate Court was the *res judicata* effect of the judgments of the District Court on Respondents' subsequent state court actions.

In any event, the interpretation of the *res judicata* effect of prior judgments on a pending action is uniquely a question of interpretation of the scope and applicability of the relevant substantive state law to the particular facts of the action pending in the state tribunal. It is amply apparent that application of the state law doctrine of *res judicata* to the facts of a particular action involves judicial determination of the factors necessary for application of the doctrine (*e.g.*, identity of subject matter, parties, causes of action and issues; and whether the prior judgment was on the merits of the causes of action involved), and their presence or absence in the precise case under consideration.

In the instant case the Appellate Court did no more or less than apply the Indiana law to the facts of these actions,

to the conclusion that the prior District Court judgments do not present a *res judicata* bar to Respondents' state court causes.

The only alleged relation this state law issue has to a substantial federal question is that it was decided in a manner which violates rights given Petitioners under the Full Faith and Credit provisions of the Federal Constitution and 28 U. S. C. § 1257(3). This contention is, in turn, based on Petitioners' allegation (Petition, p. 6) that the Appellate Court of Indiana "did reopen, examine and effect 'revise' the judgments rendered in Petitioners' favor, by the Federal Courts".

The fallacy of Petitioners' argument that the Appellate Court failed to give Full Faith and Credit to the District Court judgments, arises from the fact that the Appellate Court of Indiana found that the District Court judgments involved procedural questions and did not reach the merits of Respondents' causes. As such, the Appellate Court determined that the necessary prerequisites for application of the doctrine of *res judicata* were not present, and that the District Court judgments *even when applied to the fullest extent permissible*, were not conclusive as to the issues presented in Plaintiffs' subsequent, procedurally correct, state court actions, so as to prevent closing of the issues and trial on the merits of those actions. See, *e.g. Griffith* v. *Bank of New York* (C. A. 2d, N. Y.), 147 F. 2d 899, cert. den. 325 U. S. 874.

Perhaps the significance of these facts, as regards the substance of Petitioners' request for certiorari, is best encapsulated by the comment at 16 Am. Jur. 2d 998-9, where the text writers noted:

In order to create a reviewable federal question under

> the constitutional provision as to full faith and credit, *the fact that the validity of laws of another state is drawn into question by the courts of a state determining rights arising under such laws of such other state, and not merely the construction of such laws, must be shown.* If every time the courts of a state put a construction upon the statutes of another state, the United States Supreme Court should be required to determine whether the construction was or was not correct, upon the ground that if it were concluded that the construction was incorrect it would follow that the state courts had refused to give full faith and credit to the statutes involved, the jurisdiction of the Supreme Court would be enlarged in a manner not contemplated. Moreover, the full faith and credit clause does not require the courts of one state to follow the construction given by the courts of another state to its statutes. [Emphasis supplied.]

Citing, *e.g., Pennsylvania F. Ins. Co.* v. *Gold Issue Min. & Mill. Co.*, 243 U. S. 93; *Western Life Indem. Co.* v. *Rupp*, 235 U. S. 261; *Louisville & N. R. Co.* v. *Melton*, 218 U. S. 36; *Allen* v. *Alleghany Co.*, 196 U. S. 458; *Johnson* v. *New York L. Ins. Co.*, 187 U. S. 491; *Glenn* v. *Garth*, 147 U. S. 360; *Banholzer* v. *New York L. Ins. Co.*, 178 U. S. 402; *Lloyd* v. *Matthews*, 155 U. S. 222.

While the principle and authorities noted, *supra*, relate specifically to the question of whether a reviewable federal question is presented by an allegedly erroneous state court *interpretation* of the statutes of another state, they have a fortiori application in the instant cases. *Here, the question presented is no more than whether a state court properly interpreted its own state law.*

Obviously, the Petition does not reveal a situation where

a state court arbitrarily refused to recognize a Federal Court judgment. Were this the case, and were Respondents merely seeking a relitigation or reversal of issues clearly determined by the prior District Court judgments, Respondents submit that the District Court and the United States Court of Appeals for the Seventh Circuit (See, *Slater* v. *Stoffel*, 411 F. 2d 653 (C. A. 7th, 1969)), would not have hesitated one minute to grant Petitioners' request for injunction prohibiting continuance of the instant state court actions. By refusing injunctive relief, both Federal Courts recognized that legitimate state law questions regarding the application of the Indiana doctrine of *res judicata* to the facts of these actions, questions better left to the Appellate Courts of Indiana, were involved.

From these considerations, it is clear that Petitioners have not presented a question or questions of wide import, of substantive federal law, of attack on the validity of the Constitution or a Treaty or Statute of the United States, or of a conflict between the decision of the Indiana Appellate Court, and those of another court or courts, State or Federal. Petitioners have merely presented a question as to whether Indiana law was properly applied to the unique facts of these actions by the Appellate Court of Indiana, in an effort to obtain further appellate review of an adverse decision.

VII. CONCLUSION.

For the foregoing reasons it is respectfully submitted that this Petition for a writ of certiorari should be denied.

Respectfully submitted.

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